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1 record's clear, I think the question intended,
2 and I believe the answer intended to refer to be
3 just referring to the payments of funds as
4 reflected on BF 000030.

5 A. Yes. I think that's what you're
6 talking about.

7 Q. Yes.

8 MR. FOLKENFLIK: And there are
9 other transfers of funds on 000031 which are
10 indicated not to be involving those properties.
11 The payment of money to Mr. Holzer of \$1,062,000
12 that are identified as "Holzer personal."

13 MR. CONWAY: On 00031?

14 MR. FOLKENFLIK: 31. Which appears
15 to be --

16 MR. CONWAY: The 2405 and the 3850?

17 MR. FOLKENFLIK: Yes.

18 Q. Now, the initial transfer of funds
19 by you commenced on March 27th, 2002 with the
20 transfer of \$62,500. And that was transferred
21 to Mr. Holzer, correct?

22 A. Correct.

23 Q. Now, you two had not set up
24 Fingerhut-Holzer Partners at that time, had you?

25 A. No.

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1 Q. And Mr. Fingerhut was engaged --

2 MR. FOLKENFLIK: Mr. Holzer.

3 Q. I apologize.

4 A. It's all right.

5 Q. Profusely. Mr. Holzer was still
6 engaged at another firm at the time.

7 A. Yes.

8 Q. So the original discussions
9 concerning the purchase of Haverstraw predate
10 Fingerhut-Holzer Partners.

11 A. That's correct.

12 Q. And when you were discussing this,
13 did it occur to you to ask who the investor was
14 who would buy this after the properties were
15 accumulated?

16 A. No.

17 Q. Did it occur to you to create an
18 arrangement between --

19 A. By the way, I should just say that
20 I've never heard of anybody investing that way.
21 People can say that they do, but that is not a
22 condition on purchasing this. I mean, if
23 somebody comes along, great. That isn't the
24 reason the investment's made.

25 MR. FOLKENFLIK: Just to clarify

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1 the record, "that" meaning that there's a
2 purchaser identified in advance.

3 THE WITNESS: Right.

4 Q. Yes. You purchase property hoping
5 to transfer it to someone later or use it
6 yourself.

7 A. Could be.

8 Q. Now, what was it that you were
9 purchasing with each of these?

10 MR. FOLKENFLIK: Objection. Asked
11 and answered.

12 Q. Do you know what you were -- were
13 you purchasing bare land, were you purchasing
14 farmland? Were you purchasing dilapidated
15 structures, old houses?

16 A. It's on this sheet. I've already
17 told you about five times what I've been
18 purchasing on each piece of property. This is
19 the other sheet, whatever it is. No, no, this
20 one here. Exhibit number 5.

21 Q. Yes, but this document doesn't --

22 MR. FOLKENFLIK: This doesn't refer
23 to these.

24 Q. This document doesn't indicate what
25 it was you were buying. It just indicates that

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1 you bought something.

2 MR. FOLKENFLIK: With all respect,
3 sir, what earthly difference does it make if
4 they had a sack of straw with the Taj Mahal on
5 the piece of land he purchased in Haverstraw to
6 your client's case, which has zero to do with
7 Haverstraw?

8 MR. CONWAY: My client's case has
9 to do with the relationship between
10 Mr. Fingerhut and Mr. Holzer.

11 MR. FOLKENFLIK: No it doesn't. It
12 doesn't have to do with the fact of whether they
13 went out to eat and what they ordered. It has
14 to do with some aspect of the relationship that
15 you may think gives you some right. So inquire
16 about that aspect of the relationship.

17 Q. Now, sir, at any time in the
18 transfer of \$12 million, did you create a
19 document between yourself and Mr. Holzer
20 concerning the nature of that transfer?

21 A. No.

22 Q. At any time --

23 A. Ask me why I did it.

24 Q. We'll get there. We'll get there.

25 A. Okay. All right.

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1 Q. At any time did you view any of
2 these properties?

3 A. Yes.

4 Q. And when you viewed them, what did
5 you see?

6 A. I saw land.

7 Q. What type of land?

8 A. Land that was going to be
9 purchased.

10 Q. And what was on that land?

11 A. Grass.

12 Q. Just grass.

13 A. Yes. Well, there was a pier in
14 one.

15 Q. And was there intended to be a
16 total fund necessary for the purchase of these
17 properties?

18 A. I don't understand.

19 MR. FOLKENFLIK: Was there a dollar
20 amount that was established that had to be
21 obtained?

22 Q. Yes. Mr. Holzer was a one-third
23 participator, correct?

24 A. Well, that's not correct but that's
25 what I thought. No, it clearly wasn't because

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1 there were subsequent pieces.

2 Q. Was there a reason that you did not
3 create documentary intent for the use of the
4 funds that you transferred to Mr. Holzer?

5 MR. FOLKENFLIK: You mean
6 documentary intent meaning that he wrote
7 something on a piece of paper?

8 Q. Wrote something to say this is what
9 we're going to do with the money.

10 A. Would you repeat that, please?

11 Q. You asked me to say why didn't you
12 create a documentary history. What did you mean
13 by that?

14 A. In the relationships that I've had
15 in Geo Capital, my other partners, we have
16 invested like this in each other's deals for I
17 guess now 30 plus years. No documentation. A
18 very heavy reliance on trust with each other.

19 Now, in the case of my partners in
20 Geo Capital and in Weekly, it's never been an
21 issue. And it's been on both sides. I've done
22 the same with them saying I'm investing in X,
23 would you like to come in, and they say yes or
24 no. That was it. And then asking me.

25 Q. During the period that you were

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1 investing with Mr. Holzer, with Mr. Holzer
2 essentially contributing nothing --

3 A. Wait, wait, I didn't know that. I
4 didn't know that he was contributing nothing.

5 Q. When did you learn for the first
6 time --

7 A. 2007.

8 Q. Not before?

9 A. No. You can't tell from that. All
10 that is, is monies invested, a piece of him. I
11 didn't know that he wasn't putting his own money
12 in.

13 MR. FOLKENFLIK: The record should
14 reflect that the word "that" was referring to
15 the document on BF 30 and -- BF 30.

16 Q. BF 23.

17 MR. FOLKENFLIK: BF 23, no. It's
18 page BF 30 in Exhibit 7.

19 Q. During the time that you were
20 working with Mr. Holzer, did Mr. Holzer bring
21 any funds in excess of \$111,000 into the
22 Fingerhut-Holzer organization?

23 MR. FOLKENFLIK: LLC.

24 Q. LLC.

25 A. What does that chart show?

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1 MR. FOLKENFLIK: By the chart he's
2 referring to a work product I created from the
3 affidavit submitted by the district attorney to
4 the court in connection with the Holzer criminal
5 conviction and restitution order. And that
6 affidavit --

7 MR. CONWAY: Is that the one that
8 was identified here?

9 MR. FOLKENFLIK: No. That
10 affidavit which you obtained from the district
11 attorney's office and was produced by you to me
12 shows a series of funds being contributed to
13 Fingerhut-Holzer Partners LLC in small amounts
14 apparently for operating expense of
15 approximately \$200,000.

16 THE WITNESS: Was that 2005 and '6?

17 MR. FOLKENFLIK: It was 2005 and
18 '6.

19 Q. And during that time, during --

20 MR. FOLKENFLIK: By the way, and
21 that's not reflected on these documents,
22 including in particular Exhibit number 3 because
23 that was operating expenses as opposed to
24 investments."

25 THE WITNESS: Correct.

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1 Q. Now, you're not indicating that
2 these documents were prepared by you, were you?

3 MR. FOLKENFLIK: No, no.

4 THE WITNESS: That's not it.

5 MR. FOLKENFLIK: I'm just talking
6 about there was an affidavit supplied to me.
7 The affidavit said there were -- the following
8 payments by Mr. Fingerhut to Mr. Holzer and it
9 reflected approximately the \$12 million that
10 appears on the Exhibit 7. And there were monies
11 paid by Mr. Holzer to Mr. Fingerhut and to
12 Fingerhut-Holzer Partners. If you want to ask
13 about those --

14 MR. CONWAY: They're here. I got
15 'em.

16 Q. During the time that you were
17 together -- that you were functioning as
18 Fingerhut-Holzer Partners, did you have to
19 support Mr. Fingerhut?

20 A. I am Mr. Fingerhut.

21 Q. Jesus. During the time that you
22 were working with Mr. Holzer in Fingerhut-Holzer
23 Partners, did you have to support Mr. Holzer for
24 his personal needs?

25 A. That's a tough question. I don't

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1 know what his personal needs were. Did I pay
2 monies --

3 Q. Did you lend him monies?

4 A. Did I pay monies to support the
5 rent and the overhead, yes. But there were
6 parts in whatever those two years were that he
7 did.

8 Q. Did you give any personal funds to
9 Mr. Holzer directly for his own personal
10 expenses?

11 A. It may have ended up that way. But
12 that was not the idea.

13 MR. FOLKENFLIK: Maybe you want to
14 bring the witness' attention and clarify what
15 page 31 on Exhibit 7 refers to.

16 THE WITNESS: Is that the Breen
17 Murray thing?

18 MR. FOLKENFLIK: Yes.

19 A. I'm not really sure that is. That
20 might be something that he had --

21 Q. Excuse me --

22 MR. FOLKENFLIK: Let the witness
23 finish.

24 Q. There wasn't a question. We were
25 going there. You indicated at BF 000031 that

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1 there were two additional transfers to
2 Mr. Holzer which were identified as personal.
3 February 4th, 2005, \$202,000; March 8, 2005,
4 \$860,000. For what reason did you extend a
5 million dollars for personal expenses of
6 Mr. Holzer?

7 A. That was to cover him on an
8 investment that we made that he couldn't cover.

9 Q. Now, if Mr. --

10 A. At least I thought so.

11 MR. FOLKENFLIK: I think there's a
12 reference in the diary pages to this as well.

13 Q. Did you ever see any funds --

14 MR. FOLKENFLIK: Excuse me -- go
15 ahead.

16 Q. Did you ever see any funds in
17 excess of \$111,000 brought by Mr. Holzer into
18 Fingerhut-Holzer Partners?

19 A. There was a series -- do you have
20 those sheets? The sheet we just talked about.
21 The thing that Max got from you.

22 MR. FOLKENFLIK: The affidavit from
23 the district attorney's office. It specifies
24 payments that were made in both directions.

25 Q. Forgive me, I don't recall that.

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1 A. A series of investments -- well,
2 he'll show you.

3 Q. Are you familiar with the affidavit
4 of the district attorney of New York? Have you
5 read it yourself?

6 A. I'm not sure.

7 MR. FOLKENFLIK: That's what I sent
8 you.

9 A. Yes.

10 MR. FOLKENFLIK: The one that you
11 produced in this case?

12 MR. CONWAY: Yes.

13 Q. Now, sir, I'm going to ask this two
14 ways. The district attorney at page -- in the
15 affidavit of investigator Shannon Rowe at page
16 0000178 indicates that on December 15th, 2005,
17 shortly after -- on the day of the second
18 investment of the Rapiellos, a wire of \$600,000
19 to Holzer was sent and Holzer transferred
20 \$200,000 to your personal account on that same
21 day.

22 Are you familiar with that event?

23 A. I mean, I could probably look it
24 up, but I'm not familiar with the other part.

25 Q. Did Mr. Fingerhut transfer

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1 \$200,000 --

2 MR. FOLKENFLIK: He is

3 Mr. Fingerhut.

4 Q. Did Mr. Holzer transfer \$200,000 to
5 your personal account on or about December 15th
6 of 2005?

7 A. If it's in this statement by the
8 DA, then I would say yes. I mean, I can't tell
9 you offhand.

10 Q. Now, sir, do you have the account
11 numbers for the various accounts that were
12 issued by -- that were held by Fingerhut-Holzer
13 Partners LLC?

14 A. Bank account numbers?

15 Q. Bank account numbers, yes.

16 A. I do.

17 Q. And how many different bank
18 accounts did Fingerhut Partners have?
19 Fingerhut-Holzer Partners.

20 A. I'd have to look it up. Probably
21 four.

22 Q. And you still have access to those
23 account numbers.

24 A. They're all gone. I've shut them
25 all down.

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1 Q. The accounts may be gone. Do you
2 have access to the numbers?

3 A. I think so.

4 Q. I'd ask you, we'll leave a blank in
5 the record, when you execute the deposition,
6 would you fill those in?

7 A. If I have them, I'll give them to
8 you, sure.

9 INFORMATION REQUESTED TO BE SUPPLIED:
10 Fingerhut-Holzer Bank Account Number

11 Q. And in light of the statements by
12 the district attorney, I would ask you to -- do
13 you have access to the accounts that you
14 yourself operated for your own personal benefit
15 on or about December 15th of 2005?

16 A. Personal accounts?

17 Q. Yes.

18 A. You mean my own --

19 MR. FOLKENFLIK: Your own bank
20 accounts.

21 Q. You indicated --

22 A. Yes. Yes, yes.

23 Q. -- that you are not rejecting as
24 untrue the statement by the district attorney
25 that on December 15th you received \$200,000 from

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1 Mr. Holzer.

2 A. I don't accept it or reject it. I
3 don't know. I'd have to check.

4 Q. Sir, could I ask you to include in
5 the transcript when it's executed the banks and
6 account numbers for your personal bank accounts
7 on or about December 15th of 2005.

8 MR. FOLKENFLIK: I'll take that
9 under advisement. I think an easier way to deal
10 with this would be that we will discuss and
11 consider stipulating to the correctness of the
12 district attorney's assertion if we investigate
13 it and find it to you true.

14 A. That's fine. I can do that. But
15 giving you the bank account is crazy.

16 Q. Sir, with whom did you do your
17 personal banking in 2005?

18 A. JPMorgan.

19 Q. And you would have had investment
20 accounts as well as operating accounts and
21 personal accounts there?

22 A. Yes.

23 Q. And do they continue to be your
24 personal bank?

25 A. Yes.

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1 Q. And are the same personal and
2 operating accounts still active?

3 A. I'd have to check. I don't know.

4 Q. Now, also in the district
5 attorney's report, he indicated at page 000179
6 that on the occasion of the transfer of \$800,000
7 from the Rapiillos on the date of March 23rd,
8 2006, Mr. Holzer made purchase of \$500,000 of a
9 stock called V Campus, and that that \$500,000
10 investment was later transferred to you. Do you
11 know that to be correct, sir?

12 A. That's not correct --

13 MR. FOLKENFLIK: Let's take a step
14 at a time. Why don't you ask about the initial
15 purchase and then ask about what happened to
16 Mr. Holzer's interest in V Campus.

17 MR. CONWAY: Well, we're going to
18 go into V Campus, but at the moment I'll just
19 ask that.

20 Q. Do you dispute in any way that the
21 statement of the district attorney that of the
22 \$800,000 transferred by the Rapiillos to
23 Mr. Holzer on March 23rd, 2006, that \$500,000 of
24 V Campus was purchased by Mr. Holzer and then
25 subsequently transferred to you?

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1 MR. FOLKENFLIK: Objection. Let me
2 take --

3 MR. CONWAY: Any way you want to
4 phrase it.

5 MR. FOLKENFLIK: Look. First of
6 all, we don't know whether it was or was not the
7 Rapiellos' money that Mr. Holzer used. It may
8 have been, it may not have been. It was
9 \$500,000 out of his account to V Campus.

10 MR. CONWAY: Out of Mr. Holzer's
11 account to V Campus.

12 MR. FOLKENFLIK: And \$800,000 went
13 into his account from the Rapiellos. We don't
14 know whether there were millions of dollars in
15 that account --

16 MR. CONWAY: From Mr. Holzer, we
17 know there was nothing there.

18 MR. FOLKENFLIK: We don't know. We
19 have assumptions and that may be correct.

20 MR. CONWAY: However, on the day he
21 received \$800,000.

22 MR. FOLKENFLIK: Let's take it a
23 step at a time. There was a public filing. V
24 Campus was a public company. They publicly
25 stated in their public filing that Mr. Holzer,

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1 with his own funds, according to them --

2 MR. CONWAY: I have seen those
3 files.

4 MR. FOLKENFLIK: Mr. Holzer with
5 his own funds bought 500,000 shares of
6 securities on that day. We can stipulate that
7 that's what they said publicly. That's fine
8 with us.

9 MR. CONWAY: Right.

10 MR. FOLKENFLIK: Now, what happened
11 to Mr. Holzer's interest in V Campus, such as it
12 was, you can ask Mr. Fingerhut to explain. We
13 gave you documents reflecting that transaction
14 between Mr. Holzer and Mr. Fingerhut.

15 MR. CONWAY: What you gave me last
16 Friday? We'll get to that. That's still down
17 the road.

18 MR. FOLKENFLIK: Let's get to some
19 of those things that may be relevant to your
20 theories as opposed to Haverstraw.

21 Q. Sir, did there come a time when
22 Mr. Holzer transferred to you \$500,000 worth of
23 V Campus stock?

24 MR. FOLKENFLIK: Objection as to
25 form. Did there come a time when there was a

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1 transfer concerning -- when there was a
2 transaction concerning V Campus?

3 Q. You want to try it that way. Sir,
4 did there come a time subsequent to the date of
5 March 23rd, 2006 where there was a transaction
6 between yourself and Mr. Holzer --

7 A. No.

8 Q. -- of V Campus stock?

9 A. No.

10 Q. Did you at any time -- did
11 Mr. Holzer at any time transfer \$500,000 worth
12 of V Campus stock to you?

13 A. That was -- I don't know. That was
14 the -- no, this was the later -- you know what?
15 I'm sorry, I'll take that back. He did. He did
16 that. That stock is worthless. But I would
17 just tell you that's what happened.

18 Q. Okay, he gave you --

19 A. He didn't give me a thing, believe
20 me.

21 Q. He gave you stock that he had
22 purchased for \$500,000.

23 MR. FOLKENFLIK: Counsel, there was
24 a transaction, a contingent assignment. The
25 contingencies occurred and certain securities

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1 would have been transferred in accordance with
2 the contingency assignment when those
3 contingencies occurred.

4 THE WITNESS: Correct.

5 MR. FOLKENFLIK: We gave you the
6 contingent assignment. Why don't you ask about
7 it, because it doesn't refer to the 500,000
8 shares specifically. It refers to stock
9 ownership.

10 MR. CONWAY: I agree.

11 MR. FOLKENFLIK: So you're creating
12 a confusing record by --

13 MR. CONWAY: No, not intentionally.

14 MR. FOLKENFLIK: I didn't say the
15 word "intentionally."

16 MR. CONWAY: I'm following the same
17 timeline that the district attorney did.

18 MR. FOLKENFLIK: But the district
19 attorney didn't refer to the contingent
20 assignment or to the timeline.

21 MR. CONWAY: So let us clarify
22 that.

23 MR. FOLKENFLIK: So clarify it.
24 And since you have the document, why don't you
25 use it.

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1 MR. CONWAY: We'll get there, Max.

2 We'll get there. We'll get there.

3 MR. FOLKENFLIK: I doubt it.

4 Q. At the time that Mr. Holzer
5 transferred the \$200,000 to you that you've
6 already referred to --

7 A. You mean paid me 200,000.

8 Q. Okay, now, was this as part of a
9 transaction that had additional elements?

10 A. I have no idea except that he owed
11 me a huge amount of money and there was a time
12 when he paid me something.

13 Q. You would not dispute the date of
14 the transfer as being December 15th, 2005.

15 MR. FOLKENFLIK: Counsel, I told
16 you we'll see if we can dig up the record and we
17 will stipulate to it. My supposition is that
18 date is correct because the affidavit was
19 supposedly prepared after review of the banking
20 records. But we will verify that and stipulate
21 to it.

22 Q. Now, sir, while you were extending
23 the portions of the \$12 million over this
24 three-year period, did you ask Mr. Holzer at any
25 time for any proofs of purchase?

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1 A. Of what?

2 Q. Proofs of purchase of the
3 properties that were in question.

4 A. No.

5 Q. At any time during the multiyear
6 period when Mr. Holzer was supposedly making
7 these purchases and you were extending large
8 sums to him, did you ever discuss with him the
9 parties that were involved in the transactions?
10 Lawyers, closing companies, anything like that?

11 A. Yes. I mean, what was discussed
12 were these two guys, the other buyers.

13 Q. Did you ask where the documentation
14 was?

15 A. I've already told you I haven't.
16 We can go over this a hundred times. I will
17 tell you I have not done it, I'm not happy that
18 I didn't do it. It was a big error. Okay? But
19 you keep asking me the same question. I haven't
20 done it.

21 Q. Now, you consider this a
22 \$12 million error?

23 A. At least. Does that make you feel
24 better?

25 Q. Yes.

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1 A. Good. I'm glad.

2 Q. Let's take a look at the Thatcher
3 document.

4 MR. FOLKENFLIK: Can we go off the
5 record for a moment?

6 MR. CONWAY: You certainly may.

7 (Discussion off the record.)

8 Q. During the time that you and
9 Mr. Holzer also were partners --

10 MR. FOLKENFLIK: Objection as to
11 form.

12 Q. When you and Mr. Holzer were
13 participating in Fingerhut-Holzer Partners --

14 MR. FOLKENFLIK: LLC.

15 Q. -- LLC, did Mr. Holzer show an
16 inability to pay his personal expenses?

17 MR. FOLKENFLIK: His personal
18 expenses.

19 Q. Personal expenses, yes.

20 MR. FOLKENFLIK: Other than the
21 expenses that may have been covered by the
22 \$1,062,000.

23 MR. CONWAY: Right.

24 A. Do me a favor, repeat that, please.

25 Q. During the period that you were

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1 functioning as Fingerhut-Holzer Partners, did
2 Mr. Holzer show you an inability to cover his
3 personal obligations?

4 MR. FOLKENFLIK: Other than the
5 \$1,062,000.

6 A. I don't believe so.

7 MR. CONWAY: That would be part of
8 it.

9 A. Just that.

10 Q. And what were the circumstances
11 around your extending a million dollars of your
12 personal funds to Mr. Holzer for his personal
13 needs?

14 A. Didn't I just tell you this about
15 five minutes ago?

16 MR. FOLKENFLIK: Yes.

17 Q. Okay.

18 Now, there were parties identified
19 in this document, a gentleman by the name of
20 Adam Gurney, an Arab investor.

21 A. A what? What was the last name?

22 MR. FOLKENFLIK: An Arab investor.

23 A sheik.

24 A. Sheikh Mohammed.

25 Q. What was your hoped for involvement

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1 of Sheikh Mohammed with Fingerhut-Holzer

2 Partners?

3 A. That was the Synconium limited
4 partnership.

5 Q. And what was that about?

6 A. That was the partnership investing
7 in the area of disabilities. It was to be a
8 limited partnership, a venture partnership
9 essentially. Adam Gurney -- I don't know what
10 kind of a friend he was with David but I met him
11 through David. I met him in Ireland and he had
12 recommended -- well, at least I thought he had
13 recommended a visit to the sheik in Dubai.

14 Q. Did you ever meet this sheik?

15 A. No.

16 Q. What was the sheik going to invest
17 in?

18 A. Synconium partnership.

19 Q. Now, did there come a time in 2006
20 when you had to borrow \$4.5 million from
21 JPMorgan Chase for a series of investments in
22 Fingerhut-Holzer Partners?

23 A. Did I have to borrow it? No. But
24 I did.

25 Q. Did you choose to borrow it? And

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1 the \$4.5 million was intended for what purpose?

2 A. Investments in the series of
3 investments we have been talking about.

4 Q. Were any of those investments in
5 the Haverstraw real estate properties?

6 A. I'm not sure. It's all a function
7 of timing. Whenever it was done. There's a
8 whole series of investments made here.

9 Q. Well, it's identified in the report
10 as being a 2006 investment.

11 A. Okay, so if there are investments
12 made in 2006 in Haverstraw, it could be likely
13 that it's there. No, in fact, it's Beacon and
14 Monticello.

15 Q. Now, are you familiar with the term
16 "Dellwood"?

17 A. Dellwood. Dellwood is the
18 investment thing or the real estate thing that
19 David talked about?

20 Q. Yes. That was the putative
21 investor scheduled to purchase these properties.

22 MR. FOLKENFLIK: No. It was the
23 putative -- he was the investee. It was the
24 partnership in which the money was being
25 invested. And Dellwood was acquiring the

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1 property in Haverstraw and Beacon and others.

2 Q. Did you ever see any participation
3 by Mr. Holzer in Dellwood?

4 A. I don't understand.

5 Q. Did he ever show you any
6 documentation that would indicate that he had
7 purchased an interest in Dellwood and was
8 participating in the purchase of these
9 properties?

10 A. No.

11 Q. Did you ever ask to see any such
12 proof?

13 A. No.

14 Q. Do you know what the intended
15 purchase price of all of the investments upstate
16 were?

17 A. The intended purchase price?

18 Q. The intended purchase price.

19 MR. FOLKENFLIK: The witness
20 testified that over time new properties were
21 identified and additional purchases were made.
22 There wasn't a solitary intended purchase.
23 There wasn't a solitary intended purchase price.

24 Q. Well, the term "\$96 million"
25 appears in the documentation in the timeline of

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1 events, number 1. That sum of \$96 million came
2 from where?

3 A. Beats the hell out of me. I don't
4 know that number. What does that say?

5 Q. It says --

6 MR. FOLKENFLIK: What paragraph are
7 you on?

8 Q. Paragraph 1. "I purchased half of
9 David's interest unbeknownst to others. The
10 major reason for the establishment of
11 Fingerhut-Holzer was to take advantage of the
12 new monies from the sale of the property, at the
13 time approximately \$96 million versus the \$30
14 million cost." That's written in the first
15 person.

16 A. Right.

17 Q. Now, during the course of the
18 investment --

19 MR. FOLKENFLIK: This says it was
20 approximated that the sale of properties that
21 were purchased for 30 million could take
22 place --

23 A. He had a third and I had a half of
24 that. So it works out.

25 Q. Well, you were a hidden investor in

[Page 111]

1 David's one-third, weren't you?

2 A. A hidden investor?

3 MR. FOLKENFLIK: Objection as to
4 form. Hidden from whom?

5 Q. Your interest in David's
6 contribution was not disclosed to anyone, as
7 best you know.

8 A. I have no idea.

9 Q. Did there come a time when you
10 bought half of David's one-third?

11 A. That I bought half of David's
12 one-third.

13 Q. Yes.

14 A. I don't know.

15 Q. You indicate in BF 0032, the sixth
16 line down, "I purchased one-half of David's
17 interest unbeknownst to others."

18 A. Okay, then I did. What am I gonna
19 say?

20 Q. Why would you wish to be an unknown
21 investor in David's one-half -- in David's
22 one-third?

23 A. Jeez, I don't know. We've gone
24 over this. This was a mistake. I didn't wish
25 to do anything like that. Okay?

[Page 112]

1 Q. Well, why would you need to not be
2 revealed to the other investors?

3 MR. FOLKENFLIK: Objection as to
4 form.

5 A. It wasn't an issue for me.

6 Q. Well, you're writing there, "I
7 purchased one-half of David's interest
8 unbeknownst to others." Why would you have to
9 hide the --

10 MR. FOLKENFLIK: Objection.

11 A. It was not up to me.

12 Q. What was not up to you?

13 A. I wasn't saying you have to hide
14 it. It was his issue. It wasn't mine.

15 Q. Did you create a document that
16 established that you had half of this
17 investment?

18 A. No. N-O.

19 MR. FOLKENFLIK: That's about the
20 seventh time you asked that question.

21 A. Why do you keep going over this?
22 Listen, these were not good investments. This
23 is -- I was going to say the F word, but this is
24 fraud.

25 MR. FOLKENFLIK: That's the F word.

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1 A. What can I say? But if you'd like,
2 I'll tell you again, this was a mistake. All
3 right?

4 Q. Did David give you any reason why
5 the transaction for the sale of these properties
6 was not completed?

7 A. Why don't you look in the diary.
8 It's all in there. There were a whole series of
9 explanations why, and they were not truthful. I
10 don't know if you really need to go over all
11 those. They're right in there.

12 MR. FOLKENFLIK: And then there was
13 a point at which David claimed the transaction
14 had been completed.

15 MR. CONWAY: I saw. I saw it.

16 MR. FOLKENFLIK: Okay. And what
17 difference does this make to your clients'
18 claim?

19 Q. Did there come a time when you
20 began investing in a stock called V Campus?

21 A. Yup.

22 Q. How big a position did you take in
23 V Campus?

24 A. Well, to make it very clear, V
25 Campus we had originally financed as a private

[Page 114]

1 company out of Weekly. Okay? And we sold it
2 when it went public. Then I repurchased it back
3 in, I don't know, 2001 or something like that
4 for my own account.

5 Q. V Campus had gone public before
6 2001?

7 A. 1999 I believe.

8 Q. To your best recollection --

9 MR. FOLKENFLIK: Let him finish the
10 story. It might be helpful.

11 A. That's it. The initial investment
12 that we made in Weekly we sold out when it went
13 public. I was a board member. I left the board
14 after we sold the shares. It was a huge hit,
15 too. But it was the time that anything worked.
16 1999. Then I bought it back as a public
17 company.

18 Q. So you divested yourself of an
19 owner's interest --

20 A. But that was not me. That was
21 Weekly.

22 Q. And did you extract some benefit
23 from that as a participator in Weekly?

24 A. Yes.

25 Q. And when --

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1 A. I had a carried interest. We had
2 carried interests.

3 Q. When did you begin purchasing it on
4 the market?

5 A. I don't remember exactly. It was
6 either 2000 or 2001.

7 Q. And in Fingerhut-Holzer Partners
8 you intended to continue purchasing it?

9 MR. FOLKENFLIK: Objection.
10 Assumes facts not in evidence.

11 A. The investment made by
12 Fingerhut-Holzer in V Campus was not in the --
13 it was not common equity. I believe it was a
14 private placement. It was a preferred stock I
15 believe.

16 MR. CONWAY: I'm going to need five
17 minutes.

18 (Recess taken.)

19 BY MR. CONWAY:

20 Q. In reading the Thatcher document,
21 it's indicated that in 2004 Mr. Holzer informed
22 you that the Haverstraw property was going to be
23 sold for \$99 million, and that their share of
24 the proceeds would be approximately \$33 million.

25 So in 2004 did Mr. Holzer indicate

[Page 116]

1 to you who the purchaser would be who would
2 offer \$99 million for the property?

3 A. No. I don't remember that date
4 either, 2004. But that's not my diary I don't
5 believe.

6 Q. No, this is the Thatcher Associates
7 document. Do you disagree that the number of
8 99 million came up in the year 2004?

9 A. I don't remember it.

10 Q. Approximately what time did you
11 come to believe that you were dealing with
12 Mr. Holzer as a fraud?

13 A. Fall of 2007. Look in the diary
14 notes.

15 Q. I see, I see. What caused you to
16 reach that conclusion in 2007?

17 A. A number of things, but again, if
18 you read that --

19 Q. Reading it doesn't put it on the
20 record.

21 MR. FOLKENFLIK: Just list your
22 best recollection as you're sitting here.

23 A. The best recollection was when he
24 told me that there was a sale and that in fact,
25 he produced a deposit for \$33 million in an

[Page 117]

1 account and showed me -- and actually, the
2 person who was running, still is, York Tango
3 because she was waiting for funds. And then
4 deposited in the FH LLC account, and of course
5 it bounced.

6 Q. FH LLC. The Fingerhut-Holzer
7 account.

8 A. Whatever.

9 Q. He put that in the Fingerhut-Holzer
10 account.

11 A. Yeah. And it bounced. JPMorgan
12 shut down all the accounts the next day.

13 Q. Now, did that functionally stop
14 business from going forward at Fingerhut-Holzer
15 Partners?

16 A. Well, I would say yes. Although
17 the funds inside Fingerhut-Holzer were basically
18 paying wages and rent.

19 Q. What do you mean --

20 A. When you say did it shut down
21 Fingerhut-Holzer, the bank stopped the ability
22 to pay salaries. That would have shut it down.

23 Q. When JPMorgan closed the accounts,
24 did it close down all of the accounts attached
25 to Fingerhut-Holzer?

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1 A. Yes.

2 Q. Did that mean that you were not
3 able to accept funds or issue funds out of the
4 Fingerhut-Holzer accounts?

5 A. Yes. There weren't a lot of funds
6 in any case, but that didn't matter. He bounced
7 the check. There were \$10,000 in the account
8 and he wrote a check for 30 million. It doesn't
9 work.

10 Q. Now, on what account did he write
11 the \$33 million check?

12 A. What does that mean, "on what
13 account"?

14 Q. What account was issuing the
15 \$33 million?

16 A. It was I think his own personal
17 account.

18 Q. His personal account.

19 A. I think so, yes. I don't remember
20 exact -- I don't remember what account it was
21 supposedly written on.

22 Q. Did you ever see the check?

23 A. No. Just the deposit. No, wait a
24 minute -- no, no, no, I only saw the deposit. I
25 have copies of other checks that he wrote that

[Page 119]

1 bounced, too.

2 Q. Previously?

3 A. No. After.

4 Q. And is there a reason that

5 Mr. Holzer -- is there a reason that you're

6 aware of that Mr. Holzer would have created a

7 fraudulent document like this at that time?

8 A. It's hard to understand how he
9 could have done it and think he could have
10 gotten away with it, but it happened that he
11 knew that the person from Tango was coming over
12 and she was looking for the funds that he was
13 supposed to be contributing. And I suspect that
14 what he did was, he wrote this -- he phoned up
15 this deposit as a way of putting her off saying
16 it would take a day or so to clear. Whatever
17 the hell that meant on a wire I have no idea.

18 Q. Now, why would the money be going
19 to Tango?

20 A. We committed to invest in Tango.

21 Q. When you indicated a woman was
22 coming over from Tango --

23 A. She's the CEO.

24 Q. The CEO wanted a check for further
25 investment in Tango.

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1 A. Well, we had committed to it.

2 Q. When you indicate --

3 A. And I had done my half and
4 obviously David had not done his.

5 Q. Well --

6 A. You have to know her. She's tough.
7 She's very tough. She's terrific. I wish I had
8 20 more like her. She came over and she wanted
9 the other half of the funds.

10 Q. Just for the record, who is she?

11 A. Her name is Andrea Miller. She's
12 still running the company.

13 Q. Now, you had already extended your
14 half of the investment?

15 A. Yes.

16 Q. Did you extend it through
17 Fingerhut-Holzer Partners?

18 A. No. It was me. I ended up having
19 to basically cover what he didn't do. Again,
20 for myself.

21 Q. Was David going to issue the funds
22 from Fingerhut-Holzer?

23 A. Well, I suspect that that was the
24 idea if in fact anybody accepted a check that
25 was written for 33 million on a \$10,000 balance.

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1 So if it would have gone into Fingerhut-Holzer,
2 then it wouldn't have, so what's the difference.

3 Q. You would have found out that the
4 check was fraudulent within 24 hours, correct?

5 A. I did.

6 Q. What did you then do?

7 A. That's when I hired Thatcher.

8 Q. The next day?

9 A. Mm-hmm. Well, actually, that's
10 probably not true. I went to -- what's his
11 name?

12 MR. FOLKENFLIK: Howard Wilson.

13 A. Howard Wilson.

14 MR. FOLKENFLIK: Proskauer.

15 Q. I saw that. Is Proskauer a law
16 firm with which you had dealt previously?

17 A. Proskauer is the law firm that
18 dealt with FECS.

19 Q. What's that?

20 A. The Federation of Employment
21 Guidance Service. It's the largest social
22 service agency in New York City if you exclude
23 the hospitals. I was chairman of it.

24 Q. FECS?

25 A. Yes. I spent a lot of time with

[Page 122]

1 Proskauer.

2 Q. And the gentleman --

3 A. Not Howard but a couple other guys.

4 But they recommended Howard.

5 Q. Right. Mr. Wilson was one of their
6 criminal lawyers?

7 A. Yes.

8 Q. And when you --

9 MR. FOLKENFLIK: Among other
10 things.

11 A. Yes.

12 Q. So you had initial concern that
13 there was some criminal liability that could
14 extend to the firm and to yourself personally?

15 A. Wouldn't you think so?

16 Q. I agree.

17 A. Okay.

18 Q. Now, of course not asking what
19 Mr. Wilson's advice to you was, what did you
20 then do?

21 A. I retained Thatcher. I needed to
22 see if there -- I wanted to see evidence of what
23 was happening and if there was something to be
24 defended against.

25 Q. How did Thatcher come to you?

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1 A. Through Wilson.

2 Q. Wilson recommended Thatcher?

3 A. Yes.

4 Q. Now, had you had conversations with
5 Mr. Holzer before you went to Proskauer relative
6 to the entire extent of your relationship?

7 A. You mean to Wilson?

8 Q. No. Did you have conversations
9 with Holzer. When the check bounced --

10 A. No. Because it bounced the next
11 day, he wasn't in.

12 Q. Did you see him before you went to
13 Thatcher?

14 A. Did I see him before I went to
15 Thatcher? I don't know. I don't think so.

16 Q. Now, Thatcher is not an attorney.

17 A. He might be, but they're not a law
18 firm.

19 Q. They don't practice as a law firm.

20 A. He does private investigations.

21 Q. Who did you deal with there?

22 A. Thatcher.

23 Q. Mr. Thatcher himself?

24 A. Mm-hmm. And his right hand guy,

25 I'll think of it in a minute. But mainly

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1 Thatcher.

2 Q. Do you recall Mr. Thatcher's first
3 name?

4 MR. FOLKENFLIK: Toby.

5 Q. And how long did you deal with
6 Mr. Thatcher before the document that we've
7 identified here as --

8 A. The assignment?

9 Q. Yes.

10 MR. FOLKENFLIK: The assignment or
11 the Thatcher draft?

12 Q. The Thatcher draft.

13 A. You mean this one here?

14 MR. FOLKENFLIK: Exhibit 7. Which
15 is dated 11/1.

16 A. How long did I deal with him?

17 MR. FOLKENFLIK: The witness
18 testified he went to Thatcher the day after the
19 check bounced.

20 Q. Do we know the date the check
21 bounced?

22 A. No, but I could find that out. It
23 was October -- I'm not sure. It was '07. It
24 should be in the notes that I have.

25 Q. I'm sure it's there. Let's find

[Page 125]

1 the date.

2 MR. FOLKENFLIK: It appears to be
3 that the check bounced on the 6th of June. On
4 the 5th or 6th of June. See it on BF 33. And
5 the report is dated 11/1.

6 Q. On whose advice was it to begin the
7 daily diaries?

8 A. I don't think it was anyone's
9 advice. It was me writing it. But I think once
10 I started, and I think I showed it to Toby, I
11 think they said continue.

12 Q. They indicated write the diary?

13 A. I think they told me that it wasn't
14 a bad idea. Now, they also did their own
15 independently of mine.

16 Q. So there is other documentation
17 that may exist --

18 A. You're looking at it.

19 Q. By that I mean is there other
20 documentation beyond what we've identified here,
21 is there a final report, is there a further
22 investigation? Is there a side investigation,
23 anything of that nature?

24 A. No. I mean, this basically
25 encapsulates everything. Was there a final

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1 document that he gave me?

2 Q. Yes.

3 A. I'm sure there was.

4 MR. CONWAY: By counsel, the
5 document that you extended is called a TA draft.

6 MR. FOLKENFLIK: That's correct.

7 MR. CONWAY: Do we know if there's
8 a final issuance?

9 MR. FOLKENFLIK: I don't have one.

10 Q. Now, this particular document which
11 we've identified, when did you see it for the
12 first time?

13 A. This document?

14 Q. This document.

15 MR. FOLKENFLIK: By the document he
16 just means the first pages -- did you see it at
17 or about the date it is dated, 11/15/07?

18 A. Yes. But I saw it many times
19 before that.

20 Q. They showed you before?

21 A. Yes, but I also had a lot of
22 conversations. They also came to the office,
23 they took apart his hard drive. They did a lot
24 of work.

25 Q. Now, all of this predates your

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1 going to the district attorney.

2 MR. FOLKENFLIK: What does "all of
3 this" mean?

4 Q. The efforts by Thatcher Associates
5 predate your going to the district attorney.

6 A. I'm not sure that I waited until a
7 final report before I went. But clearly
8 Thatcher predated the district attorney, no
9 doubt. I mean, I had a feeling that they were
10 right.

11 Q. Now, when they came in -- when
12 Thatcher came in they took apart from Holzer's
13 computer?

14 A. Yes.

15 Q. Did they --

16 A. Well, the hard drive.

17 Q. Did they take possession of it?

18 A. They did and then they brought it
19 back.

20 Q. Did they take possession of his
21 phone?

22 A. I don't know. I don't want to add
23 any titillation here.

24 (Fingerhut Exhibit 8 for
25 identification, Bates No. BF 54 through 57)

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1 Q. There were a series of documents
2 that were marked on our break. Can you identify
3 Exhibit number 8.

4 A. I don't know who this person is.

5 MR. FOLKENFLIK: Can you identify
6 this waiver of notice of organization meeting,
7 Fingerhut-Holzer, Waverly LLC?

8 A. I don't remember this. But is
9 there a date on here?

10 Q. December 27th, '05.

11 A. What is this? I don't know. This
12 is part of the creation of the document? I
13 don't know what this is.

14 Q. No, it would not have been.

15 A. I mean of the organization.

16 MR. FOLKENFLIK: Counsel, this
17 appears to be a document that comes from the
18 office of the Secretary of State of Delaware.
19 No, it's -- let me see. New York. It appears
20 to be an official document establishing the
21 organization Fingerhut-Holzer, the Waverly I
22 LLC.

23 MR. CONWAY: Rather than go through
24 the witness, do you want to stipulate to that?

25 MR. FOLKENFLIK: We'll look online

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1 and if it's an official document, we'll
2 stipulate to it.

3 MR. CONWAY: I'm sure it's correct.

4 Q. Did Fingerhut-Holzer have an
5 investment that was known as Fingerhut-Holzer,
6 the Waverly 1 LLC?

7 A. I don't remember.

8 Q. You don't recall that?

9 MR. FOLKENFLIK: Counsel, I believe
10 that's the entity to which your client wired
11 their \$300,000.

12 MR. CONWAY: Agreed.

13 Q. And you don't have any recollection
14 of it?

15 MR. FOLKENFLIK: The witness
16 already testified about the Waverly.

17 A. A couple times.

18 MR. FOLKENFLIK: The question is
19 the precise name and identity of the
20 organization, since there were so many with
21 confusingly similar names.

22 Q. Did you have multiple Waverly
23 investments?

24 A. Did I? Did I make them myself?

25 Q. Did Fingerhut-Holzer have multiple

[Page 130]

1 Waverly investments?

2 A. I believe so. I'm not sure on
3 Waverly. A couple of them we did.

4 MR. FOLKENFLIK: If you look at
5 Exhibit number 3, the witness just to save time
6 can identify --

7 A. No, that was Waters Edge.

8 MR. FOLKENFLIK: You can identify
9 the investments that may have had some
10 connection to the same developer as the Waverly.
11 Why don't you do that.

12 A. Well, Waverly, Waters Edge, Village
13 Walk and Augustine Island are all the same
14 developer. All in Jacksonville.

15 (Fingerhut Exhibit 9 for
16 identification, Bates No. BF 58 through 89)

17 Q. Now, take a look at Exhibit 9.
18 What is Exhibit number 9?

19 A. You just gave it to me.

20 Q. Yes, what is it?

21 MR. FOLKENFLIK: It's the operating
22 agreement of Fingerhut-Holzer Partners LLC.

23 Q. And is this the operating document
24 of Fingerhut-Holzer Partners, "as best you know?

25 A. I assume so.

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1 Q. Sir, would you take a look at the
2 date on that.

3 A. October 25th, 2007.

4 Q. Now, this document was created
5 after you determined that Mr. Holzer was acting
6 dishonestly within the company. Correct? For
7 what purpose would you create an operating
8 agreement after there is a fracture of the firm
9 such as you have described?

10 A. This is really not anything to do
11 with him. This is me selling a membership
12 interest to my son. If you look under
13 "recitals." This was not the first formation of
14 this thing. This operating agreement goes back.

15 Q. How far --

16 A. Effective June 21, 2004.

17 Q. Do you have a copy of an operating
18 agreement dated June 21, 2004?

19 A. Not on me.

20 Q. Do you still have one?

21 A. I'm assuming I do.

22 MR. CONWAY: I'd ask that that be
23 produced.

24 MR. FOLKENFLIK: We produced what
25 we were able to locate. And if that isn't

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1 amongst those agreements, we've produced it.

2 A. This was only --

3 MR. FOLKENFLIK: And I believe we
4 did. I think this was one of several documents
5 we produced to you, and there's another one
6 that's the operating agreement for
7 Fingerhut-Holzer Partners LLC that bears an
8 earlier date I believe.

9 MR. CONWAY: I don't believe that
10 we have that. What we have is the
11 Fingerhut-Holzer Fund limited partnership
12 agreement at 10/1/04.

13 A. Well, all I could say is this is
14 the second document I've seen that refers to
15 Fingerhut-Holzer Partners LLC being formed in
16 2004. Because there's another document already
17 that we looked at.

18 Q. Yes, we've seen it.

19 MR. FOLKENFLIK: I'll double-check.

20 A. Look at the first paragraph, you'll
21 see.

22 MR. FOLKENFLIK: I'll double-check.
23 And if we have an earlier version of the
24 operating agreement; however, I believe the
25 operating agreement -- other than -- let me see

[Page 133]

1 this. Other than whatever adjustments were
2 required to be made because of the sale of -- a
3 capital contribution by Andrew Fingerhut, that
4 the nature of the terms of the agreement are
5 probably quite similar.

6 Q. There came a time after June 2007
7 when you met and sat with Mr. Holzer. On that
8 occasion did you make inquiry of him concerning
9 the nature of his actions in Fingerhut-Holzer
10 and the check for \$33 million? Did you ask him
11 what was going on?

12 A. A check for what?

13 Q. \$33 million. The deposit slip for
14 \$33 million.

15 A. Oh, okay.

16 Q. Did you meet with him and did you
17 discuss it?

18 A. Yes. A few times.

19 Q. What did Mr. Holzer indicate to
20 you?

21 A. What did he indicate to me?

22 Q. Yes.

23 A. He said it was real.

24 Q. He said what was real?

25 A. The 33 million.

[Page 134]

1 Q. And did he attempt to explain away
2 its absence?

3 A. Its absence or it bounced?

4 Q. Its nonexistence.

5 A. He attempted to.

6 Q. And what did he say about it?

7 A. I don't remember offhand, but I
8 have it in my notes. That's why you have them.

9 Q. I have the notes. However, I need
10 it on the transcript.

11 A. Well, you're going to have to get
12 it off of there because I don't remember.

13 Q. You want us to read it again?

14 A. Do what you want.

15 MR. FOLKENFLIK: If "by the notes"
16 you mean the TA draft or the diary?

17 MR. CONWAY: I presume he means the
18 diary notes.

19 MR. FOLKENFLIK: Well, there are no
20 notes late enough. The latest diary note is
21 8/16/07.

22 A. Then it's in the TA. Tell me what
23 you want to get.

24 Q. What I want to know is what did
25 Mr. Holzer explain to you about his actions?

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1 MR. FOLKENFLIK: Did he say
2 anything about why he wrote a \$33 million check
3 that bounced?

4 A. Of course. The deal broke or this
5 or that. He was embarrassed about not admitting
6 to me that the deal didn't happen so he wanted
7 to do it. It was absurd.

8 Q. The deal didn't happen; however,
9 were there properties that he had purchased with
10 the monies that had been extended?

11 A. Were there properties that he had
12 purchased.

13 Q. Yes.

14 A. With the monies that had been
15 extended.

16 Q. He had 20 properties there that
17 he's supposed to have purchased. Did he
18 purchase them?

19 A. Obviously not.

20 Q. Did you ask him what happened to
21 the money?

22 A. Yes.

23 Q. What did he say?

24 A. He told me the deal broke, he told
25 me, you know, the check got lost in the mail.

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1 Every kind of bullshit excuse you could think
2 of. Were any of them credible? They weren't.

3 MR. FOLKENFLIK: Counsel, if you
4 look at the Thatcher report, it says that the
5 deal keeps getting delayed in the summer.

6 MR. CONWAY: I understand, I saw
7 it.

8 MR. FOLKENFLIK: And to October of
9 2007, paragraph number 7, where Holzer finally
10 admits that the Dellwood investment does not
11 exist and that he has only approximately \$40,000
12 left.

13 A. That was I believe a function of
14 Toby cornering him.

15 MR. FOLKENFLIK: Yes.

16 Q. And how did that come to be?

17 A. He came into the office, he and
18 another guy went in and talked to him. They
19 were wired, David admitted it. He confessed to
20 everything.

21 Q. From June until October he was
22 still continuing to perpetrate the fraud?

23 A. Yes. And he would continue if he
24 were here today.

25 Q. Do you know the identities of the

[Page 137]

1 parties that came and confronted him in October?

2 MR. FOLKENFLIK: It's in the notes.

3 A. Lincoln Ornston. Good guy.

4 Lincoln's not there anymore. He started his own
5 firm. But Toby and Lincoln. By the way, I
6 never realized you could do that, you could have
7 a wire.

8 Q. Yes, in the State of New York
9 you're allowed.

10 A. I never realized that. It was
11 amazing.

12 MR. FOLKENFLIK: Counsel, for the
13 record, you'll see that as late as
14 September 15th -- excuse me, I'm wrong about
15 that. Never mind.

16 Fingerhut Exhibit 11 for
17 identification, Bates No. BF 8 through 13)

18 Q. Sir, would you take a look at
19 Exhibit 11.

20 A. Okay.

21 Q. What is Exhibit 11?

22 A. It's an assignment of his interests
23 if he doesn't pay.

24 Q. How did you come to negotiate that?

25 A. I called my attorney. I told him

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1 put it together.

2 Q. And your attorney is named who?

3 A. Kevin Prakke. I think he did a
4 really good job on this.

5 MR. FOLKENFLIK: It's a good job.

6 A. It is a good document. He's only
7 \$330 an hour.

8 Q. \$330 an hour?

9 A. At the time. Anyway, he wrote
10 this. He forced -- he didn't force, he gave it
11 to Holzer, he signed it. Clearly none of this
12 happened, putting up the cash, so therefore I
13 took back what essentially I had already
14 invested in, in a sense for him.

15 Q. Was is signed by both parties. Do
16 you recognize your signature?

17 A. Yup.

18 Q. Do you recognize David Holzer's
19 signature?

20 A. Yup, I sure do.

21 Q. Now, the purpose of this document
22 was to establish what? What did you want to
23 accomplish with this?

24 A. I wanted to have a contingency in
25 case the monies were not -- that I had put up

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1 monies for him. He had ownership in certain
2 positions as a function of monies that he owed
3 and was supposedly paying. And I basically had
4 that to take those properties that I already
5 bought for myself.

6 Q. Now, did Mr. -- this happened
7 before the confrontation with Mr. Thatcher?

8 A. I don't remember the date on that.

9 Q. 3rd day of October.

10 MR. FOLKENFLIK: And the meeting,
11 according to the --

12 A. It's about the same.

13 MR. FOLKENFLIK: It's about the
14 same date. It just says October. Thatcher
15 doesn't have the date in October when he
16 confronted Holzer.

17 A. And in fact -- no. It's related
18 but I don't think Toby was directly involved in
19 giving that document to Holzer.

20 Fingerhut Exhibit 12 for
21 identification, Bates No. BF 14 through 18)

22 Q. Now, there was also --

23 MR. FOLKENFLIK: Counsel, just to
24 make your life easier, the assignment, as
25 Mr. Fingerhut said, of the V Campus equities

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1 that he bought with \$500,000 that you suggested
2 was your clients' money, which is incorrect,
3 leaving aside the issue of whether Mr. Fingerhut
4 pursuant to the collateral assignment agreement
5 would be a bona fide purchaser for value without
6 notice of the --

7 MR. CONWAY: An issue to be
8 resolved at another time.

9 MR. FOLKENFLIK: Leaving that
10 aside, that stock is worthless.

11 A. Also I bought stock myself.

12 MR. FOLKENFLIK: Yes, he bought
13 stock himself. That stock is -- the company is
14 not in business. The debtors of the company --

15 MR. CONWAY: Well, it was in
16 business in 2007.

17 MR. FOLKENFLIK: Yes. But not
18 since.

19 MR. CONWAY: And it had a value on
20 October of 2007 --

21 MR. FOLKENFLIK: Not much.

22 A. I have a \$2.3 million investment
23 here that's worthless.

24 Q. How many shares of stock did you
25 own at the time?

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1 A. I don't know. I have no idea. I
2 owned a lot because I bought a big piece of this
3 preferred offering.

4 MR. FOLKENFLIK: It's not clear
5 that the stock, although it was trading, had
6 actual value in October 2007 but it would be
7 irrelevant in any event.

8 A. That's true. This was not a
9 public --

10 MR. FOLKENFLIK: V Campus was
11 public.

12 A. This was a preferred -- this was a
13 private offering, if you will. This was not
14 public shares.

15 MR. FOLKENFLIK: Your shares.

16 A. The ones purchased. I also owned a
17 lot of common, too.

18 Q. So the value of V Campus at the
19 time would have been greater than the \$2 million
20 investment that had been made already?

21 MR. FOLKENFLIK: Maybe less.

22 MR. CONWAY: Possibly, but we don't
23 know.

24 A. I'm not sure. I don't think a lot
25 more, if that.

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1 Q. Well, if it was worth a stated
2 value or more, then certainly the \$500,000 that
3 was transferred would have been its value as of
4 the day of the transfer to you.

5 MR. FOLKENFLIK: No.

6 A. What does -- what does transfer to
7 me mean? There was no transfer to me.

8 MR. FOLKENFLIK: What happened is
9 that --

10 MR. CONWAY: Do you want to go off
11 the record?

12 MR. FOLKENFLIK: Let's do it on the
13 record.

14 A. Let me explain the whole thing to
15 you.

16 Q. It has to be in response to a
17 question.

18 MR. FOLKENFLIK: Let him explain.
19 Would you explain what happened. Go ahead.

20 Q. First, this document that you've
21 examined, the --

22 A. Contingency?

23 Q. The collateral contingent. That
24 was intended by you to take control and
25 possession of the interests of Mr. Holzer up to

[Page 143]

1 the value that you had extended to him.

2 MR. FOLKENFLIK: No.

3 Q. Which was like 7 million --

4 A. It was to take control of those
5 interests in the event that the value had not
6 been paid. Not up to the value, not contingent
7 on a particular value. Contingent on
8 non-repayment of what he owed.

9 Q. There was also a promissory note
10 dated October 9th, 2007 for the sum of
11 \$7,603,800.

12 (Fingerhut Exhibit 13 for
13 identification, Bates No. BF 15 through 18)

14 Q. Can you identify that as the
15 promissory note that was created by you as a
16 companion document --

17 A. What a joke.

18 Q. -- to the prior?

19 MR. FOLKENFLIK: This is 7/6.

20 A. What about it?

21 Q. That's intended to be a supporting
22 document to the contingent assignment of equity
23 interests.

24 A. I believe so.

25 Q. That would essentially make him owe

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1 you in two ways; a promissory note and the
2 contingent surrender.

3 A. Good luck.

4 Q. And at the same time did you demand
5 and receive a resignation by Mr. Holzer from
6 Fingerhut --

7 A. It was a little bit after I think.
8 But it was about the same time.

9 MR. FOLKENFLIK: It says
10 October 15th. The promissory note is dated
11 the 9th. The contingent assignment agreement is
12 dated the 3rd.

13 Q. Was all of this executed at the
14 Fingerhut-Holzer offices?

15 A. It must have been because there's
16 no other place I could grab him.

17 Q. Do you have a present active
18 recollection of being present for this
19 execution?

20 A. Oh, absolutely. I'm wondering if
21 it was the same -- no, it wasn't the same day as
22 Toby.

23 MR. FOLKENFLIK: Mr. Holzer did
24 deliver, just to shortcut this, two checks
25 aggregating the amount of \$7 million on or about

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1 November 29th, 2007, both of which bounced.

2 MR. CONWAY: November 29th?

3 MR. FOLKENFLIK: Yes.

4 A. When this was all brought to him,
5 he said, well, you know, I've just been hired
6 for -- to be a trader. I guess he had left
7 Breen Murray. I don't remember how that
8 happened. But he had just been hired by some
9 big shot trader and he was getting a 7 or
10 \$8 million up-front bonus. And he was going to
11 pay me the \$7 million to ameliorate this issue.

12 Q. That's what he told you.

13 A. No, he sent me two checks, \$7
14 million, and guess what, they bounced, too.
15 Next thing, going to Sing Sing.

16 Q. Did there come a time when -- now,
17 completing these transactions, had you decided
18 to approach the district attorney concerning
19 this?

20 A. Yes. I had to be sure that Toby
21 could find what one needed to present to the
22 district attorney.

23 Q. And did you approach the district
24 attorney yourself or did Mr. Thatcher do it for
25 you?

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1 A. I'm sure Thatcher did it. I mean,
2 I may have been with him, but I don't remember.

3 Q. Well, do you have a present active
4 recollection of walking into the district
5 attorney's office and sitting with somebody?

6 A. No, I never dealt with a district
7 attorney. I dealt with an ADA.

8 Q. Well, as an assistant district
9 attorney, do you remember sitting with someone
10 at some point --

11 A. Yes, a couple times.

12 Q. Who did you sit with?

13 A. I knew you were going to ask me and
14 I forgot her name.

15 Q. Is that Ms. Pane?

16 A. Yes. What's her first name?

17 Q. Christine Payne.

18 A. Yeah, that's it. She left for --

19 Q. She was pregnant.

20 A. Yeah, yeah. She was great. She
21 did a great job.

22 Q. Did you then deal with the
23 successor assistant district attorney?

24 A. Yeah, but the majority of the work
25 was done by Chris.

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1 Q. Do you recall meeting any
2 successor?

3 A. I'm not sure I met her. I talked
4 to her.

5 Q. All right, did there come a time
6 when you were asked to testify to the grand
7 jury?

8 A. Yes.

9 Q. And did you do so?

10 A. Yes. Chris was I think still the
11 ADA on that.

12 Q. She handled the questioning of
13 you --

14 A. Yes.

15 Q. -- as a grand jury witness?

16 A. Yes.

17 Q. When was the last time you saw
18 Mr. Holzer?

19 A. I'm not sure if it was the day that
20 Toby and Lincoln came in to have him confess.
21 There may have been one more day he was in that
22 he gave me those checks. No, you know what,
23 that's not right. This was independent I
24 believe of Toby and Lincoln. This might have
25 been a week later he was in. I had it all

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1 prepared and I wasn't going to let him get out
2 without doing this.

3 Q. Mr. Prakke?

4 MR. FOLKENFLIK: When the witness
5 said "this" he was pointing to Exhibit 13.

6 A. I'm sorry, the contingent and the
7 promissory note.

8 Q. That was created by your attorney?

9 A. Yes.

10 Q. Mr. Prakke?

11 A. Yes.

12 Q. When they were executed, they were
13 executed solely in the presence of Mr. Holzer
14 and not with anyone else?

15 A. I don't know.

16 Q. I didn't see a witness there.

17 MR. FOLKENFLIK: I didn't see a
18 notary certificate.

19 A. The contingent thing, there's just
20 two signatures I know, Holzer and myself.

21 Q. All right, now you were making
22 reference to this in some regard?

23 MR. FOLKENFLIK: No, he said there
24 were only two signatures.

25 A. That was the next time I saw

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1 Holzer. He signed that, the note, and I believe
2 also maybe he was in one later time because when
3 he did his resignation, I don't remember if it
4 was the same date or not. I don't think so, it
5 was later. But not much later. So maybe I saw
6 him once or twice after he confessed.

7 Q. Now, as regards the V Campus
8 stock --

9 MR. FOLKENFLIK: Could we go off
10 the record for a minute?

11 MR. CONWAY: Sure.

12 (Discussion off the record.)

13 Q. Do you know who the founder of V
14 Campus was?

15 A. I'm not sure. I know the guy who
16 was running it for many years.

17 Q. Who was that?

18 A. Of course I can't remember his name
19 either. Nat Kannan.

20 Q. Nat Kannan?

21 A. Nat Kannan, K-A-N-N-A-N.

22 Q. And you indicated you were on the
23 board of V Campus?

24 A. That was about four or five years
25 before that.

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1 MR. FOLKENFLIK: He testified he
2 was on the board when it went public.

3 A. Right, from about 1995 to '98 or
4 '9.

5 Q. Was V Campus affiliated with any
6 particular university?

7 A. Any particular university?

8 Q. University, yes.

9 A. I don't think so.

10 MR. FOLKENFLIK: I think the V
11 stands for virtual.

12 A. Its first name was University
13 Online. If that's what you're thinking.

14 Q. That was its formal name.

15 A. Yeah, it's a little complicated
16 because they bought a number of companies, and
17 one of the companies they bought became bigger
18 than them. But they were initially called
19 University Online when we invested in it as
20 to -- as a Weekly investment. When it went
21 public it was still called University Online.

22 Q. Did it have any call letters that
23 you would know on the stock --

24 A. UOLC I think. I mean, it was
25 over-the-counter. They then bought a series of

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1 companies, one was called Pro Soft, and there
2 was a second. And I think at the time they
3 bought the second -- the first or the second
4 company, they renamed the company to V Campus
5 because it was more than just a University
6 Online.

7 Q. And do you know what it was
8 capitalized at when it went public?

9 MR. FOLKENFLIK: By "capitalized"
10 you mean the market cap?

11 Q. Market cap.

12 A. Oh, lord, I don't. I would say it
13 was probably, given where we were as an investor
14 where we had probably no more than 10 million
15 pre on the investment, I would say it was
16 probably somewhere in the 25, \$30 million range
17 when it went public.

18 Q. When you say 10 million preferred,
19 you had 10 million shares?

20 A. No, 10 million pre money in the
21 value.

22 Q. How many shares --

23 A. This is all long prior to the
24 events at issue. I would have to go back and
25 look at it. But given what we would do back in

[Page 152]

1 those days, probably a 3, 4 million investment,
2 so it was probably 25 to 30 percent post Weekly
3 owned of University Online.

4 Q. How many shares did
5 Fingerhut-Holzer own at its peak?

6 A. They never owned University Online.

7 Q. When your records indicate V
8 Campus, what is it referring to?

9 A. V Campus. That's after they
10 changed the name. It wasn't the same company.
11 They bought a number of other companies.

12 Q. The company that went public is not
13 the same company as V Campus?

14 A. The company that went public was
15 University Online. They bought at least two
16 other companies and then changed their name to V
17 Campus.

18 Q. All right, when they became V
19 Campus, what was their stock value?

20 A. I don't know offhand. Probably not
21 a great deal different than when we sold it.

22 Q. And what did you sell it for?

23 A. As I said, I think it was like 25,
24 30 million. Actually, it was probably more. I
25 don't know. I don't remember. It was a mistake

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1 to buy it then because clearly it went down a
2 lot. What ended up happening with the company
3 had nothing to do with the equity value. What
4 happened was that the company was really,
5 really, really poorly run. However, the Pro
6 Soft product was a terrific product. It's a
7 CIW --

8 MR. FOLKENFLIK: Just talk about
9 what happened to the equity in the company.

10 A. Okay, well, what happened was it
11 was mismanaged. Never generated enough cash and
12 was always in a position of trying to get cash,
13 get new equities, et cetera, et cetera. That
14 was the preferred piece that we show in there.

15 Q. And then --

16 A. Wait a minute, I'm not finished.
17 That didn't work either. The company was in
18 really sorry shape. I then lent the company
19 money.

20 Q. How much?

21 A. I don't know. A million dollars,
22 maybe more. I wasn't the only one. There was
23 another group called Gott Bettor.

24 Q. Gott Bettor?

25 A. Yes. G-O-T-T, B-E-T-T-O-R. They

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1 loaned the company money, I loaned the company
2 money. The company couldn't pay it off. As you
3 can see, Nat had pretty good ideas about what
4 the company should be, but it was terribly
5 managed. But it wasn't just that, there were
6 other issues, too.

7 Anyway, so what ended up happening
8 was that there was what is known I guess as a
9 friendly foreclosure. I'm taking a couple
10 years -- it sounds like it happened right away
11 but this is years later. And the friendly
12 foreclosure was all the equity was wiped out.
13 This wasn't a bankruptcy, although the way the
14 directors handled it, it was terrible.

15 Q. Well, who was foreclosing?

16 A. The debtors were foreclosing.
17 There was not enough equity to go around. So
18 every share I ever owned is gone.

19 Q. When exactly did this occur?

20 A. 2008.

21 Q. This would be after the date of --
22 pursuant to your agreement with Holzer --

23 A. I got all the shares back and they
24 were worthless. That's good.

25 Q. Where was the stock held at the

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1 time of the transfer back?

2 A. Where was the stock held --

3 Q. What was Fingerhut-Holzer holding?

4 Were they holding warrants, stock sheets? What
5 were they holding?

6 A. The only thing they were holding
7 was this preferred issue.

8 Q. And in what form did it manifest
9 itself?

10 MR. FOLKENFLIK: You mean were
11 there actual shares issued?

12 MR. CONWAY: Yes.

13 MR. FOLKENFLIK: Physical shares?

14 MR. CONWAY: Yes.

15 A. I don't know. I'm not sure. May
16 have been but they were not publicly traded
17 shares. They were preferred shares.

18 MR. FOLKENFLIK: They might have
19 been held as a book entry.

20 Q. They would be in an account
21 somewhere?

22 MR. FOLKENFLIK: It might have been
23 held as a book entry on the books of the --

24 A. V Campus reported it all so there's
25 gotta be -- they're all in their documents.

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1 MR. CONWAY: Give me a few minutes
2 with my clients.

3 (Recess taken.)

4 BY MR. CONWAY:

5 Q. No more questions.

6 MR. FOLKENFLIK: I have nothing.

7 (TIME NOTED: 2:50 p.m.)
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INSTRUCTIONS TO WITNESS

Please read your deposition over carefully and make any necessary corrections. You should state the reason in the appropriate space on the errata sheet for any corrections that are made.

After doing so, please sign the errata sheet and date it.

You are signing same subject to the changes you have noted on the errata sheet, which will be attached to your deposition.

It is imperative that you return the original errata sheet to the deposing attorney with thirty (30) days of receipt of the deposition transcript by you. If you fail to do so, the deposition transcript may be deemed to be accurate and may be used in court.

[Page 158]

1 I have read the foregoing transcript of
2 my deposition given on February 7, 2013, and it
3 is true, correct and complete, to the best
4 of my knowledge, recollection and belief,
5 except for the corrections noted hereon
6 and/or list of corrections, if any, attached
7 on a separate sheet herewith.

8

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BARRY FINGERHUT

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Subscribed and sworn to

18

before me this ____ day

19

of _____, 20____.

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Notary Public

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[Page 159]

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E R R A T A S H E E T

3

I, BARRY FINGERHUT, do hereby certify that I

4

have read the foregoing transcript of my testimony, and

5

further certify that it is a true and accurate record

6

of my testimony (with the exception of the corrections

7

listed below).

8

PAGE LINE

CORRECTION

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Signed under the pains and penalties this _____

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day of _____, 2013.

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BARRY FINGERHUT

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C E R T I F I C A T E

STATE OF NEW YORK)

: SS.

COUNTY OF NEW YORK)

I, SUZANNE PASTOR, a Shorthand
Reporter and Notary Public within and for the
State of New York, do hereby certify:

That BARRY FINGERHUT, the witness
whose deposition is hereinbefore set forth, was
duly sworn by me and that such deposition is a
true record of the testimony given by the
witness.

I further certify that I am not
related to any of the parties to this action by
blood or marriage, and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this _____, 2013.

SUZANNE PASTOR

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